TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 164.

H. HACKFELD AND COMPANY, LIMITED, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 31, 1903.
CERTIORARI AND RETURN FILED FEBRUARY 16, 1904.

(19,178.)

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the district court of the United States for the district of Hawaii Territory	1	1
Motion to file information	1	1
Order granting motion to file information	2	2
Information	3	2
Affidavit of E. R. Stackable	7	4
Summons	10	6
Information	12	7
Affidavit of E. R. Stackable	16	9
Return of service of summons	20	11
Trial	21	12
Defendant's plea	21	12
Order to file plea, &c	22	12
Defendant's plea	23	13
Order to file plea	23	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 20, 1904.

	Original.	Print
Stipulation waiving jury	24	13
Stipulation as to facts	25	14
Order submitting cause	29	16
Finding, judgment, and sentence	30	16
Judgment	32	17
Exception to judgment	34	18
Petition for writ of error, &c	35	19
Order allowing writ of error	36	20
Assignment of errors	38	20
Appeal bond	39	21
Clerk's certificate	42	23
Writ of error	43	23
Citation	45	25
Marshal's return	47	26
Order of submission	51	27
Opinion	52	27
Judgment	57	29
Order denying rehearing	58	30
Order staying mandate	59	30
Clerk's certificate	60	31
Writ of certiorari	61	31
Stipulation as to return to writ of certiorari	64	32
Return to writ of certiorari	66	33

United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD AND COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Transcript of Record.

Upon writ of error to the United States district court for the district of Hawaii.

1 UNITED STATES OF AMERICA, *District of Hawaii,* } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Motion to File Information.

Comes now Robert W. Breckons, attorney of the United States in and for the district of Hawaii, and moves the court now here for permission to file an information against H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, charging the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, with a violation of the provisions of section 10 of an act of the Congress of the United States of America, entitled: "An act in amendment of the various acts relative to immigrants and the importation
2 of aliens under contract or agreement to perform labor;" approved March 3, 1891.

ROBERT W. BRECKONS,
United States Attorney in and for the District of Hawaii.

(Endorsed:) Title of court and cause. Filed Dec. 22d, 1902. W. B. Maling, clerk, by F. L. Hatch, D. C.

From Minutes United States District Court, vol. II, page 161, Monday, December 22d, 1902.

Order Granting Motion to File Information.

(Title of Court and Cause.)

Upon presentation of the information filed by Robert W. Breckons, attorney for the United States in and for the district of Hawaii, supported by the oath of E. R. Stackable, and on motion of the said district attorney:

It is hereby ordered that said information be filed, and that the clerk of this court do issue a summons in this cause directed to the defendant, H. Hackfeld & Co., Ltd., a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, directing said defendant to appear before the judge of this court, in the court room of the United States district court for this district, on the 12th day of January, A. D. 1903, to answer the charge contained in the information; said summons to state generally the nature of the charge contained in said information and to be accompanied by a certified copy of the information in this cause.

3 UNITED STATES OF AMERICA, *District of Hawaii,* } *ss:*

In the District Court of the United States within and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Information.

First count.

Be it remembered, that Robert W. Breckons, attorney of the United States of America, who for the said United States in this behalf prosecutes, in his own person comes now into the district court of the United States of America, for the district aforesaid, on this 22d day of December, of the same term, and for the said United States of America, gives the court here to understand and be informed, that one H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the dis-

trict aforesaid, was the agent of the steamship "Korea," a ves-
4 sel plying between the State of California and the Empire of Japan, and on said 12th day of November, A. D. 1902, in said district, did refuse to receive back on board said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immigrants, then and there unlawfully in the United States of America, and who lately before then, to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled; "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

Second count.

And the said attorney of the United States, who prosecutes as aforesaid for the United States, further gives the court here to understand and be informed that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan, and on the said 12th day of November, A. D. 1902, in said district, did neglect to detain on said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immi-
5 grants, who lately before then, to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States of America, to wit, to the port of San Francisco and State of California on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

Third count.

And the said attorney of the United States, who prosecutes as aforesaid, for the said United States of America, further gives the court here to understand and be informed that the said H. Hackfeld & Co., Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse and neglect to re-

turn to the port from whence they came, to wit, to the port of Yokohama, in the Empire of Japan, two certain Japanese immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America, the said Terujiro Yamato and the said Hachiero Irie having lately before then, to wit, on the
6 28th day of October, A. D. 1902, unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel, contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

Whereupon, the said attorney of the said United States, who prosecutes as aforesaid for the said United States of America, prays the consideration of the court in the premises, and that due process of law may be awarded against said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, in this behalf to make it answer to the said United States of America concerning the premises aforesaid.

ROBERT W. BRECKONS,
United States Attorney for the District of Hawaii.

7 UNITED STATES OF AMERICA, } ss:
District of Hawaii, }

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Affidavit of E. R. Stackable.

E. R. Stackable, being first duly sworn according to law, deposes and says that he is the collector of customs of the United States in and for the district of Hawaii; that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse to receive back on board of said vessel "Korea" one Terujiro Yamoto and one Hachiero

Irie, Japanese immigrants then and there unlawfully in the
8 United States of America, and who lately before them, to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

And the said E. R. Stackable further deposes and says that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in the said district did refuse to detain on board said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immigrants, who lately before them, to wit, on the twenty-eighth day of October, A. D. 1902, did unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled

"An act in amendment of the various acts relative to immi-
9 grants and the importation of the aliens under contract of agreement to perform labor;" approved March 3, 1891, and against the peace and dignity of the United States of America.

And the said E. R. Stackable further deposes and says that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse and neglect to return to the port from whence they came, to wit, the port of Yokohama, in the Empire of Japan, two certain Japanese immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America, the said Terujiro Yamoto and the said Hachiero Irie, having lately before then, to wit, on the 28th day of November, A. D. 1902, unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the forms of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract of agreement to perform labor;"

approved March 3, 1891; and against the peace and dignity of the United States of America.

E. R. STACKABLE,
Collector of Customs of the United States for the District of Hawaii.

10 Subscribed and sworn to before me this 22d day of December, A. D. 1902.

[SEAL.] FRANK L. HATCH,
Deputy Clerk United States District Court, Territory of Hawaii.

(Endorsed:) Title of court and cause. Information. Filed December 22d, 1902. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

UNITED STATES OF AMERICA, *District of Hawaii,* } ss:

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Summons.

The President of the United States of America to H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, defendant, Greeting:

11 You are hereby notified that a criminal information against you has on this 22d day of December, A. D. 1902, been filed in the office of the clerk of the district court of the United States for the Territory of Hawaii, charging that on the 12th day of November, A. D. 1902, you were the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and that on said 12th day of November, A. D. 1902, you did refuse to receive back on board of said vessel, and that you did on said day refuse to detain on board said vessel, that you did on said day refuse and neglect to return to the port from whence they came one Terujiro Yamoto and one Hachiero Irie, two certain Japanese immigrants then and there unlawfully in said United States of America, the said Terujiro Yamoto and the said Hachiero Irie having lately before then, to wit, on the 28th day of October,

A. D. 1902, unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the said United States of America; a certified copy of which said information, together with the affidavit in support thereof, is hereto attached.

12 You are hereby directed to appear and answer to the charge contained in said information upon file against you in the district court of the United States in and for the Territory of Hawaii, on or before the twelfth day of January, A. D. 1903.

Witness the Honorable Morris M. Estee, judge of said district court, this 22d day of December, A. D. 1902, and of the Independence of the United States the one hundred and twenty-seventh.

[SEAL.] W. B. MALING,
Clerk U. S. District Court, Territory of Hawaii,
By FRANK L. HATCH,
Deputy Clerk.

UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

In the District Court of the United States within and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Information.

First count.

13 Be it remembered, that Robert W. Breckons, attorney of the United States of America, who for the said United States in this behalf prosecutes, in his own person comes now into the district court of the United States of America, for the district aforesaid, on this 22d day of December, of the same term, and for the said United States of America, gives the court here to understand and be informed, that one H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the

Empire of Japan, and on said 12th day of November, A. D. 1902, in said district, did refuse to receive back on board said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immigrants, then and there unlawfully in the United States of America, and who lately before then, to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

14 Second count.

And the said attorney of the United States, who prosecutes as aforesaid for the said United States, further gives the court here to understand and be informed that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan, and on the said 12th day of November, A. D. 1902, in said district, did neglect to detain on said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immigrants, who lately before then to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States of America, to wit, to the port of San Francisco and State of California on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

Third count.

15 And the said attorney of the United States, who prosecutes as aforesaid, for the said United States of America, further gives the court here to understand and be informed that the said H. Hackfeld & Co., Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November A. D. 1902, in said district, did refuse and neglect to return to the port from whence they came, to wit, to the port of Yokohama, in the Empire of Japan, two certain Japanese

immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America, the said Terujiro Yamato and the said Hachiero Irie, having lately before then, to wit, on the 28th day of October, A. D. 1902, unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California on said vessel, contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

Whereupon the said attorney of the said United States, who prosecutes as aforesaid for the said United States of America, prays the consideration of the court in the premises, and that due process of law may be awarded against said H. Hackfeld & Company, Lim-
16 ited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, in this behalf to make it answer to the said United States of America concerning the premises aforesaid.

ROBERT W. BRECKONS,
United States Attorney for the District of Hawaii.

UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Affidavit of E. R. Stackable.

E. R. Stackable, being first duly sworn according to law, deposes and says that he is the collector of customs of the United States in and for the district of Hawaii; that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State
17 of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse to receive back on board of said vessel "Korea" one Terujiro Yamoto

and one Hachiero Irie, Japanese immigrants then and there unlawfully in the United States of America, and who lately before then, to wit, on the 28th day of October, A. D. 1902, did unlawfully come to the United States, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America entitled "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agreement to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

And the said E. R. Stackable further deposes and says that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse to detain on board said vessel "Korea" one Terujiro Yamoto and one Hachiero Irie, Japanese immigrants, who lately before then, to wit,

on the twenty-eighth day of October, A. D. 1902, did unlaw-
18 fully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the form of the statute in such case made and provided, to wit, section 10 of an act of the Congress of the United States of America, entitled "An act in amendment of the various acts relative to immigrants and the importation of the aliens under contract of agreement to perform labor;" approved March 3, 1891, and against the peace and dignity of the United States of America.

And the said E. R. Stackable further deposes and says that the said H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, on the 12th day of November, A. D. 1902, within the district aforesaid, was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan; and on said 12th day of November, A. D. 1902, in said district, did refuse and neglect to return to the port from whence they came, to wit, the port of Yokohama, in the Empire of Japan, t-o certain Japanese immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America, the said Terujiro Yamoto and the said Hachiero Irie having lately before then, to wit, on the 28th day of November, A. D. 1902, unlawfully come to the United States of America, to wit, to the port of San Francisco, in the State of California, on said vessel; contrary to the forms of the statute in such case made and provided, to wit, section 10 of an

act of the Congress of the United States of America, entitled
19 "An act in amendment of the various acts relative to immigrants and the importation of aliens under contract or agree-

ment to perform labor;" approved March 3, 1891; and against the peace and dignity of the United States of America.

E. R. STACKABLE,
Collector of Customs of the United States for the District of Hawaii.

Subscribed and sworn to before me this 22d day of December, A. D. 1902.

[SEAL.] FRANK L. HATCH,
Deputy Clerk United States District Court, Territory of Hawaii.

UNITED STATES OF AMERICA, } ss:
Territory of Hawaii, City of Honolulu, }

I, Walter B. Maling, clerk of the district court of the United States of America, in and for the Territory of Hawaii, do hereby certify the foregoing to be *a* full, true and correct copies of the original information and affidavit in the case of The United States *vs.* H. Hackfeld & Co., Ltd., as the same remains of record and on file in the office of the clerk of said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said district court this 22d day of December, A. D. 1902.

[SEAL.] W. B. MALING,
Clerk of the United States District Court, Territory of Hawaii,
By FRANK L. HATCH,
Deputy Clerk.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
District of Hawaii, }

I do hereby certify and return that I served the annexed summons on the therein named defendants, by handing to and leaving a true and correct copy thereof, together with a copy of information and affidavit, with F. W. Klebahn, secretary of H. Hackfeld & Co., Ltd., personally, at Honolulu in said district on the 22d day of December, A. D. 1902.

E. R. HENDRY,
U. S. Marshal.

(Endorsed:) Title of court and cause. Summons. Filed December 22d, 1902. W. B. Maling, clerk.

21 From the Minutes of the U. S. District Court, vol. II, page 165, Monday, December 29, 1902.

Trial.

(Title of Court and Cause.)

And now comes the United States, by its attorney, Robert W. Breckons, Esq., and also comes the defendant, H. Hackfeld and Company, Limited, by its attorneys, Kinney, Ballou & McClanahan, and by consent of the court said attorneys are permitted to enter the plea of said defendants in writing, which said written plea and said consent are in words and figures following to wit:

In the District Court of the United States, Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Defendant's Plea.

Now comes H. Hackfeld & Co., Ltd., the above-named defendant corporation, by its attorneys, Kinney, Ballou & McClanahan,
22 and enters this its plea of not guilty to the information filed herein by Robert W. Breckons, United States attorney for the district of Hawaii, and dated the 22d day of December, 1902.
Dated at Honolulu H. T., this 29th day of December, 1902.

H. HACKFELD & COMPANY, LIMITED,
By KINNEY, BALLOU & McCLANAHAN,
Its Attorneys.

I, Morris M. Estee, judge of the above-entitled court, do hereby consent to the making of the plea of the defendant in the above-entitled cause, by its attorneys, Kinney, Ballou & McClanahan, and by the consent of the district attorney, and do hereby order that the same may be entered of record.
Dated at Honolulu, this 29th day of December, A. D. 1902."

MORRIS M. ESTEE,
Judge of the District Court of the United States, Territory of Hawaii.

And it was further ordered that the trial of this case be had on Tuesday, December 30th, 1902, at 10 o'clock a. m.

23 In the District Court of the United States, Territory of Hawaii, October Term, 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Defendant's Plea.

Now comes H. Hackfeld & Co., Limited, the above-named defendant corporation, by its attorneys, Kinney, Ballou & McClanahan, and enters this its plea of not guilty to the information filed herein by Robert W. Breckons, United States attorney for the district of Hawaii, and dated the 22d day of December, 1902.

Dated at Honolulu H. T., this 29th day of December, 1902.

H. HACKFELD & COMPANY, LIMITED.
By KINNEY, BALLOU & McCLANAHAN
(E. B. M.), *Its Attorneys.*

I, Morris M. Estee, judge of the above-entitled court, do hereby consent to the making of the plea of the defendant in the above-entitled cause, by its attorneys, Kinney, Ballou & McClanahan, and by the consent of the district attorney, and do hereby order that the same may be entered of record.

24 Dated at Honolulu, this 29th day of December, A. D. 1902.

MORRIS M. ESTEE,
Judge of the District Court of the United States, Territory of Hawaii.

(Endorsed:) Title of court and cause. Defendant's plea. Filed December 29th, 1902, at 10 a. m. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

UNITED STATES OF AMERICA, *District of Hawaii,* } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Stipulation Waiving Jury.

It is hereby stipulated by and between the respective parties plaintiff and defendant in the above-entitled cause that a jury be

waived, and that said cause may be heard before the Honorable Morris M. Estee, judge of the district court of the United
25 States in and for the district and Territory of Hawaii. Jury waived on Tuesday, the 30th day of December, A. D. 1902, or any day thereafter.

Dated at Honolulu, T. H., this 30th day of December, A. D. 1902.

ROBERT W. BRECKONS,
Attorney for Plaintiff.
KINNEY, BALLOU & McCLANAHAN,
Attorneys for Defendant.

(Endorsed:) Title of court and cause. Stipulation waiving jury. Filed, December 30th, 1902. W. B. Maling, clerk. Frank L. Hatch, deputy clerk.

UNITED STATES OF AMERICA, }
District of Hawaii, } ss:

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Stipulation as to Facts.

The United States of America, the plaintiff in the above-
26 entitled action, through and by Robert W. Breckons, attorney of the United States, in and for the district and Territory of Hawaii, and H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, through and by its counsel, Messrs. Kinney, Ballou and McClanahan, do hereby agree and stipulate that on the trial of this cause, the following shall be taken as the facts, and all the facts, in said cause and that the jury herein, under the instructions of the court, or the court herein, should the trial by jury be waived, shall determine the cause upon the facts, and none other.

First. That the defendant herein, H. Hackfeld & Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii.

Second. That on the 12th day of November, A. D. 1902, within the district and Territory of Hawaii, the said defendant was the agent of the steamship "Korea," a vessel plying between the State of California and the Empire of Japan.

Third. That on the 28th day of October, A. D. 1902, the said

steamship "Korea" did bring into the port of San Francisco, in the United States, one Terujiro Yamoto and one Hachiero Irie, two Japanese persons from Yokohoma in the Empire of Japan.

Fourth. That on the 29th day of October A. D. 1902, the said Terujiro Yamoto and the said Hachiero Irie were denied admission into the United States by the board of special inquiry, at the port of San Francisco, in the State of California.

27 *Fifth.* That the board so denying admission to the said Terujiro Yamoto and the said Hachiero Irie was regularly constituted, and had jurisdiction to hear and determine the right of the said Terujiro Yamoto and the said Hachiero Irie to land in the United States.

Sixth. That on the said 29th day of October, A. D. 1902, the said board did order the deportation of said Japanese immigrants.

Seventh. That on the seventh day of November, A. D. 1902, said Japanese immigrants were taken from the port of San Francisco to the steamship "Korea," and were received on board of said steamship for the purpose of deporting them to Japan.

Eighth. That on the 12th day of November, A. D. 1902, the said steamship "Korea" did arrive at the port of Honolulu, in the district and Territory of Hawaii; that at the time of the arrival of said steamship "Korea" at said port of Honolulu, the said immigrants were still on board of said vessel; that said Japanese immigrants, together with certain deported Chinese, were placed in a room on board said vessel and locked up by the steerage steward of said vessel; at twelve o'clock, midnight, of said 12th day of November, A. D. 1902, said Japanese were still on board said vessel in said room; that between that time and five o'clock on the morning of the 13th day of November A. D. 1902, said Japanese had effected their escape; that the only method of egress was through portholes, which were nearly twenty-five feet above the water; that this method of escape could not have been reasonably anticipated by the

28 master or officers or agents of said steamship "Korea;" that said escape did not occur by *vis major*, or inevitable accident; and that said escape did not occur by reason of any negligence or lack of proper care on the part of the officers of the vessel or said defendant.

Ninth. That the said defendant made search for said escaped immigrants but up to the present time have not apprehended the said immigrants, and said immigrants have not been returned to Japan.

ROBERT W. BRECKONS,
Attorney of the United States in and for the District and Territory of Hawaii.

KINNEY, BALLOU & McCLANAHAN,
Attorneys for H. Hackfeld & Company, Limited, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii.

H. HACKFELD & CO., LTD.
H. A. ISENBERG, *2d Vice-President.*

(Endorsed:) Title of court and cause. Stipulation as to facts. Filed December 30th, 1902. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

29 From Minutes of the United States District Court, vol. II, page 166, Tuesday, Dec. 30th, 1902.

Order Submitting Cause.

(Title of Court and Cause.)

This cause coming on now to — heard on the information heretofore filed herein by R. W. Breckons, Esq., United States attorney, and the plea of the defendant of not guilty heretofore entered herein, and said defendant now appears by its attorneys, Kinney, Ballou & McClanahan, and in open court files its waiver to a jury and agrees that this cause may be heard and determined by the judge of this court without intervention of a jury. And thereupon this cause comes on for trial by agreement with the parties herein. And thereupon the parties thereto, The United States, by its attorney, R. W. Breckons, Esq., and said defendant, by its attorneys, Kinney, Ballou & McClanahan, stipulate in writing as to the facts, and all the facts herein, and submit its cause upon said stipulation, said stipulation being ordered by the court placed upon file, and thereupon after argument of respective counsel this case is by the court taken under advisement.

30 UNITED STATES OF AMERICA, } *ss:*
District of Hawaii, }

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Finding, Judgment, and Sentence.

This cause coming on now to be heard, and it now appearing to the court that the defendant herein has duly and regularly waived a trial by jury in this cause, and that the plaintiff and defendant have submitted said cause on a stipulation as to the facts, and the court being now fully advised in the premises—

Doth find that said defendant, H. Hackfeld & Company, Limited,

a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, did, on the 12th day of November, A. D. 1902, refuse and neglect to return to the port from whence they came, to wit, to the port of Yokohama, in the Empire of Japan, two certain Japanese immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America.

31 2.

And the court doth further find said defendant guilty in manner and form as charged in the information herein; to which said finding of the court the said defendant now and here excepts.

And now on motion of Robert W. Breckons, attorney of the United States in and for the district and Territory of Hawaii, the said defendant, H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, by its agent and counsel, appears in court, and it being demanded of it, through its agent and counsel, what it has to say, or can say, why the sentence of the law, upon the finding of the court of guilty, on this day, shall not now be pronounced against it, it says that it has nothing further or other to say than it has heretofore said.

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said defendant, H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, do pay a fine of six hundred dollars ($600.00).

And it is further considered by the court that the United States do have and recover all of their costs in and about this prosecution expended, and that it have execution for said fine and said costs.

Honolulu, Hawaii, January 3d, A. D. 1903.

MORRIS M. ESTEE, *Judge.*

32 (Endorsed:) Title of court and cause. Findings, judgment and sentence. Filed, January 3d, 1903. W. B. Maling, clerk, by Frank L. Hatch, deputy clerk. Entered in J. & D. Book, pages 109 and 110, F. L. H.

From Minutes United States District Court, vol. II, page 169, Saturday, January 3d, 1903.

Judgment.

(Title of Court and Cause.)

This cause coming on now to be heard, and it now appearing to the court that the defendant herein has duly and regularly waived a trial by jury in this cause, and that the plaintiff and defendant have submitted said cause on a stipulation as to the facts, and the ocurt being now fully advised in the premises—

Doth find that said defendant, H. Hackfeld and Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, did on the 12th day of November, A. D. 1902, refuse and neglect to return to the port from whence they came, to wit, to the port of Yokohama, in the Empire of Japan, two certain Japanese immigrants, to wit, Terujiro Yamoto and Hachiero Irie, then and there unlawfully in the United States of America, and the court doth further find said defendant guilty in manner and form as charged in the information herein; to
33 which said finding of the court the said defendant now and here excepts. And now on motion of Robert W. Breckons, attorney of the United States in and for the district and Territory of Hawaii, the said defendant, H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, by its agent and counsel, appears, in court, and it being demanded of it, through its agent and counsel, what it has to say, or can say, why the sentence of the law, upon the finding of the court of guilty, on this day, shall not now be pronounced against it, it says that it has nothing further or other to say than it has heretofore said.

2.

Whereupon, the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said defendant H. Hackfeld & Company, Limited, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, do pay a fine of six hundred dollars ($600.00).

And it is further considered by the court that the United States do have and recover all their costs in and about this prosecution expended, and that it had execution for said fine and said costs.

To which sentence said defendant duly excepted and gave notice of motion for a new trial.

34 UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Exception to Judgment.

Now comes the above-named defendant, by its attorneys, Kinney, Ballou & McClanahan, and enters this, its exception to the finding,

judgment and sentence of the above-entitled court in the above-entitled matter, rendered on the 3d day of January, A. D. 1903, as being contrary to the law and the evidence, and contrary to the law as applicable to the stipulated facts in said cause.

Dated this 9th day of January, A. D. 1902.

KINNEY, BALLOU & McCLANAHAN,
Attorneys for H. Hackfeld & Co., Ltd., Defendant.

(Endorsed): Title *to* court and cause. Exception to judgment. Filed January 9th, 1903, at 10:10 a. m. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

35 UNITED STATES OF AMERICA, } *ss.*
District of Hawaii, }

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Petition for Writ of Error and Supersedeas.

H. Hackfeld & Company, Limited, an Hawaiian corporation, defendant in the above-entitled cause, feeling itself aggrieved by the finding, judgment and sentence rendered by the above-entitled court and by the judgment entered in the above-entitled cause, comes now by Kinney, Ballou and McClanahan, its attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the United States circuit court of appeals for the ninth circuit, under and according to the laws of the United States in that behalf made and provided, and also that an
36 order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States circuit court of appeals for the ninth circuit, and your petitioner, will ever pray.

Dated this 9th day of January, A. D. 1903, at Honolulu, T. H.

H. HACKFELD & COMPANY, LIMITED,
Defendant,
By KINNEY, BALLOU & McCLANAHAN,
Its Attorneys.

UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Order Allowing Writ of Error.

37 Upon motion of E. B. McClanahan, Esq., of the firm of Kinney, Ballou and McClanahan, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be had and is allowed to have reviewed in the United States circuit court of appeals for the ninth circuit the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is, fixed at $1200, twelve hundred dollars.

Dated this ninth day of January, A. D. 1903, at Honolulu, T. H.

MORRIS M. ESTEE,
Judge United States District Court in and for the District and Territory of Hawaii.

(Endorsed:) Title of court and cause. Petition for a writ of error and supersedeas. Filed January 9th, 1903, at 10 o'clock and 15 minutes a. m. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

38 UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Assignment of Errors.

Comes now the defendant and files the following assignment of error, upon which it will rely in its prosecution of the writ of error filed in the above-entitled cause:

1.

That the above-entitled court erred in rendering judgment against defendant in said cause upon the pleadings in said cause, and that said judgment is contrary to law and the facts as stated in the pleadings in said cause.

Wherefore, the said H. Hackfeld & Company, Limited, plaintiff in error, prays that the judgment of the district court of the United States, in and for the district and Territory of Hawaii, be re-
39 versed, and that the said district court be directed to grant a new trial of said cause.

2.

Dated this 9th day of January, A. D. 1903, at Honolulu, T. H.

KINNEY, BALLOU & McCLANAHAN,
Attorneys for Defendant-, Plaintiffs in Error.

(Endorsed:) Title of court and cause. Assignment of error. Filed January 9th, 1903, at 10 o'clock and 20 minutes a. m. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

UNITED STATES OF AMERICA, *District of Hawaii,* } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Appeal Bond.

Know all men by these presents that we, H. Hackfeld and Company, Limited, an Hawaiian corporation, as principal, and
40 J. F. Humberg and H. Schultze, of the city of Honolulu, Territory of Hawaii as sureties, are held and firmly bound unto The United States of America, plaintiff, above-named, in the sum of twelve hundred dollars ($1200.00) to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns firmly by these presents.

Sealed with our seals and dated the 9th day of January, A. D. 1903.

Whereas, the above-named defendant, H. Hackfeld and Company, Limited, has sued out a writ of error to the United States circuit court of appeals for the ninth circuit, to reverse the judgment in the above-entitled cause by the district court of the United States in and for the district and Territory of Hawaii.

Now, therefore, the condition of this obligation is such that if the above-named H. Hackfeld and Company, Limited, shall prosecute said writ to effect and answer all costs, both those which have already accrued in the above-entitled court and those which may accrue in the circuit court of the United States for the ninth circuit, and shall pay the judgment of six hundred dollars heretofore interposed against it by said judgment, if it shall fail to make good
41 its plea, then this obligation shall be void, otherwise to remain in full force and effect.

H. HACKFELD AND CO., LTD.
W. PFOTENHAUER, *Director.* [SEAL.]
F. J. HUMBERG. [SEAL.]
H. SCHULTZE. [SEAL.]

UNITED STATES OF AMERICA, }
District of Hawaii, } *ss:*

J. F. Humberg and H. Schultze, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is a resident freeholder in said Territory; that he is worth the sum of $1200 (twelve hundred dollars) over and above his debts and liabilities, and that his property is situate in said Territory and subject to execution.

F. J. HUMBERG.
H. SCHULTZE.

Subscribed and sworn to before me this 15th day of January, A. D. 1903.

[SEAL.] FRANK L. HATCH,
Deputy Clerk, United States District Court, Territory of Hawaii.

The above bond is hereby approved.

MORRIS M. ESTEE,
Judge of said Court.

(Endorsed:) Title of court and cause. Appeal bond. Filed January 15th, 1903. W. B. Maling, clerk. By Frank L. Hatch, deputy clerk.

42 UNITED STATES OF AMERICA, *Territory of Hawaii,* } *ss:*

In the District Court of the United States in and for the Territory and District of Hawaii.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii. } No. 87.

Clerk's Certificate to Transcript.

I, Walter B. Maling, clerk of the district court of the United States for the Territory and district of Hawaii, do hereby certify that the foregoing pages, numbered from 1 to 40, inclusive, *is* a true and complete transcript of the record and all proceedings had in said court in the cause of The United States *vs.* H. Hackfeld and Company, Limited (a corporation), as the same remains of record and on file in my office, and that the same constitute the return to annexed writ of error, and I further certify that I hereto annex and herewith transmit the original citation on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is $11.35, and that said amount was paid by plaintiff in error,

43 In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 19th day of January, A. D. 1903.

[SEAL.] WALTER B. MALING, *Clerk.*

UNITED STATES OF AMERICA, *Territory of Hawaii,* } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD & COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Writ of Error.

The President of the United States of America to the Honorable M. M. Estee, judge of the district court of the United States in and for the district and Territory of Hawaii:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said district court be-

44 fore you, between The United States of America, plaintiff, and H. Hackfeld & Company, Limited, defendant, an error has

happened, to the prejudice and damage of the said defendant, H. Hackfeld and Company, Limited, as is cited and appears by the petition herein.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States circuit court of appeals for the ninth circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said circuit court on the 2d day of February, A. D. 1903, that the record and proceedings aforesaid be inspected, that said circuit court of appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 9th day of January, A. D. 1903.

Attest my hand and seal of the United States district court for the district and Territory of Hawaii, at the clerk's office at Honolulu, Oahu, Territory of Hawaii, on the day and year last above written.

[SEAL.] W. B. MALING,
Clerk United States District Court in and for the District and Territory of Hawaii.

45 Allowed this 9th day of January, A. D. 1903.

MORRIS M. ESTEE,
Judge of the District Court of the United States in and for the District and Territory of Hawaii.

(Endorsed:) No. 87. District court, United States Territory of Hawaii. United States of America *vs.* H. Hackfeld & Co., Ltd. Writ of error. Filed January 9, 1903. W. B. Maling, clerk.

UNITED STATES OF AMERICA, } ss:
District of Hawaii, }

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD AND COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendant.

Citation.

The President of the United States of America to Robert W. Breckons, attorney for the United States of America in and for the district and Territory of Hawaii, Greeting:

46 You are hereby cited and demanded to be and appear at the United States circuit court of appeals for the ninth circuit, to be held in the city of San Francisco, in the State of California, within thirty days from the date of this writ pursuant to the writ of error filed in the clerk's office of the district court of the United States in and for the district and Territory of Hawaii, wherein The United States of America is plaintiff and H. Hackfeld and Company, Limited, is defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 9th day of January, A. D. 1903, and of the Independence of the United States, the 127th.

MORRIS M. ESTEE,
Judge of the District Court of the United States in and for the District and Territory of Hawaii.

Attest:

[SEAL.] W. B. MALING, *Clerk.*

47 UNITED STATES OF AMERICA, *District of Hawaii,* } *ss:*

In the District Court of the United States in and for the District and Territory of Hawaii, October Term, A. D. 1902.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
H. HACKFELD AND COMPANY, LIMITED, a Corporation Organized and Existing under and by Virtue of the Laws of the Territory of Hawaii, Defendants.

Marshal's Return.

I hereby certify that I served the within citation upon Robert W. Breckons, attorney for the United States of America, in and for the district and Territory of Hawaii, on the 9th day of January, A. D. 1903, at the city of Honolulu, in the district and Territory of Hawaii, by then and there delivering to said Robert W. Breckons personally a true copy of the within citation.

Dated at Honolulu, in the district and Territory of Hawaii, this 9th day of January, 1903.

E. R. HENDRY,
United States Marshal.

(Endorsed:) No. 87. District court, United States Territory of Hawaii. United States of America *vs.* H. Hackfeld & Co., Ltd. Citation. Filed January 9, 1903. W. B. Maling, clerk.

48 (Endorsed:) No. 940. In the United States circuit court of appeals for the ninth circuit. H. Hackfeld & Company, Limited, plaintiff in error, *vs.* The United States of America, defendant in error. Transcript of record. Upon writ of error to the United States district court, for the district of Hawaii. Filed February 16, 1903. F. D. Monckton, clerk.

49 & 50 *Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.*

51 At a stated term, to wit, the October term, A. D. 1902, of the United States circuit court of appeals for the ninth circuit, held at the courtroom, in the city and county of San Francisco, on Friday, the fifteenth day of May, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Order of Submission.

Ordered, cause argued by J. E. Foulds, Esquire, counsel for the plaintiff in error, and Benjamin L. McKinley, Esquire, assistant United States attorney, and submitted to the court for consideration and decision.

52 In the United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD & COMPANY, LIMITED (a Corporation), Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

Opinion of U. S. Circuit Court of Appeals.

J. E. Foulds, for plaintiff in error.
Marshall B. Woodworth and Robert W. Breckons, for defendant in error.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

An information was filed against H. Hackfeld & Co., Limited, a corporation, charging it with violating the provisions of section 10 of the act of Congress, entitled "An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," approved March 3, 1891, 26 U. S. Stats. 1084, which provides as follows: "That all aliens who may unlawfully come to the United States shall, if practicable, be immediately sent back on the vessel by which they were brought in. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner
53 or owners of the vessel on which such aliens came; and if any master, agent, consignee, or owner of such vessel shall refuse to receive back on board the vessel such aliens, or shall neglect to detain them thereon, or shall refuse or neglect to return them to the port from which they came, or to pay the cost of their maintenance while on land, such master, agent, consignee, or owner shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than three hundred dollars for each and every offense; and any such vessel shall not have clearance from any port of the United States while any such fine is unpaid." The information

alleged in substance that the appellant did refuse and neglect to return to the port of Yokohama two Japanese immigrants, Terujiro Yamoto and Hachiero Irie, whom it had brought from that port to the port of San Francisco and who had been denied admission to the United States at the latter port. The case was tried before the court without a jury on an agreed stipulation of the facts. The stipulation of facts contains the following: "That on the 12th day of November, A. D. 1902, the said steamship 'Korea' did arrive at the port of Honolulu, in the district and Territory of Hawaii; that at the time of the arrival of said steamship 'Korea' at said port of Honolulu, the said immigrants were still on board of said vessel; that said Japanese immigrants, together with certain deported Chinese, were placed in a room on board said vessel and locked up by the steerage steward of said vessel; at twelve o'clock, midnight, of said 12th day of November, A. D. 1902, said Japanese were still on board said vessel in said room; that between that time
54 and five o'clock on the morning of the 13th day of November, A. D. 1902, said Japanese had effected their escape; that the only method of egress was through portholes, which were nearly twenty-five feet above the water; that this method of escape could not have been reasonably anticipated by the master, or officers, or agents of said steamship 'Korea;' that said escape did not occur by *vis major*, or inevitable accident; and that said escape did not occur by reason of any negligence or lack of proper care on the part of the officers of the vessel or said defendant. That the said defendant made search for said escaped immigrants, but up to the present time have not apprehended the said immigrants, and said immigrants have not been returned to Japan." On this stipulation of facts the plaintiff in error was found guilty of the misdemeanor charged and was adjudged to pay a fine of six hundred dollars. To review that judgment the writ of error is taken.

GILBERT, circuit judge, after stating the case as above, delivered the opinion of the court.

The plaintiff in error invokes the rule that a penal law must be strictly construed and contends that within the meaning of section 10 of the act of 1891, there can be no neglect to comply with the obligation thereby imposed if a reasonable attempt be made to perform the same. The case of Warren *vs.* United States, 58 Fed. 559, decided by the circuit court of appeals for the first circuit, is an authority adverse to this contention, but the plaintiff in error earnestly urges that the doctrine of that case involves a mis-
55 conception of the true meaning of the statutes and it cites the case of United States *vs.* Spruth, 71 Fed. 679, in which the district court of the eastern district of Pennsylvania doubted the wisdom of such a construction of language in a criminal statute. In the view which we take of the record which is before us, it becomes unnecessary to enter into a discussion of this question. The

case was tried before the court without a jury upon an agreed stipulation of the facts. In the stipulation appears the fact that the two Japanese who were ordered to be deported, and who had been taken by the plaintiff in error on its steamer from San Francisco to Honolulu en route to Japan, escaped from the vessel while she was lying at anchor at the port of Honolulu, and that they made their escape through portholes from which they dropped or descended into the sea. The record contains no finding of fact by the court further than that the plaintiff in error was found guilty as charged, nor does it state the ground on which the trial judge found the plaintiff in error guilty of the misdemeanor charged. For aught that we know, the court found that by placing the men in the room, as it did, without taking precaution against their escape through the portholes, the plaintiff in error neglected to perform the obligation imposed upon it by the statute. It is true that the stipulation of the facts recites that the escape did not occur by reason of any negligence or lack of proper care on the part of the officers of the vessel or of the plaintiff in error and that the method of the escape could not have been reasonably anticipated. But the court was not bound by these recitals nor was it prevented thereby from placing upon the
56 stipulated facts the construction which in its judgment they should properly bear. (Haight *vs.* Green, 19 Cal. 113.) The assignment of error is that the court erred in rendering judgment upon the pleadings and the facts therein stated. If the trial court entertained the opinion, as may well have been the case, that the plaintiff in error was guilty of negligence in placing the deported persons in a room on board the vessel from which portholes, visible and open, afforded means of escape to anyone who could swim a short distance to the shore, we, in our own view of the facts, could find no ground to question the correctness of that conclusion. The rule is that the burden is on the plaintiff in error to show error in the trial court. In this case we think it has failed to meet the requirement of the rule. The judgment will, therefore, be affirmed.

(Endorsed:) Opinion. Filed Oct. 5, 1903. F. D. Monckton, clerk.

57 United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Judgment.

In error to the district court of the United States for the district of Hawaii.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Hawaii, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Judgment. Filed and entered Oct. 5, 1903. F. D. Monckton, clerk.

58 At a stated term, to wit, the October term, A. D. 1903, of the United States circuit court of appeals for the ninth circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the ninth day of November, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Order Denying Petition for a Rehearing, etc.

Ordered, petition for a rehearing, heretofore filed herein, denied and issuance of mandate stayed to and including Monday, the 16th instant.

59 At a stated term, to wit, the October term, A. D. 1903, of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday, the sixteenth day of November, in the year of our Lord one thousand nine hundred and three.

Present: The Honorable William W. Morrow, circuit judge; Honorable John J. De Haven, district judge.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Order Staying Mandate.

Upon motion of J. E. Foulds, Esquire, of counsel for the plaintiff in error, ordered, issuance of mandate herein stayed sixty (60) days from date.

60 United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Certificate of Clerk Circuit Court of Appeals to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing fifty-nine (59) pages, numbered from one (1) to fifty-nine (59), inclusive, to be a true copy of the entire record of the above entitled case in the said, the United States circuit court of appeals for the ninth circuit, as the same remains of record in my office.

Attest my hand and the seal of the said, the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 7th day of December, A. D. 1903.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

61 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

Being informed that there is now pending before you a suit in which H. Hackfeld & Company, Limited, is plaintiff in error and The United States of America is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the district court of the United States for the district of Hawaii, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
62 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eleventh day of January, in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

63 [Endorsed:] 81. File No. 19,178. Supreme Court of the United States. No. 527, October term, 1903. H. Hackfeld & Co., Limited, *vs.* The United States. 81. No. 940. United States circuit court of appeals for the ninth circuit. Writ of certiorari. Filed Jan. 25, 1904 F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

64 Supreme Court of the United States, October Term, 1903.

H. HACKFELD AND COMPANY, LIMITED, Petitioner,
against
THE UNITED STATES OF AMERICA, Respondent. } No. 527.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified transcript of the record on file in the Supreme Court of the United States in the above cause shall constitute the return of the clerk of the circuit court of appeals for the ninth circuit to the writ of certiorari issued herein.

Dated January 18th, 1904.

MAXWELL EVERTS,
Counsel for Petitioner.
H. M. HOYT,
Solicitor-General of the United States.

(Endorsed:) Stipulation of counsel as to return to writ of certiorari. Filed Jan. 25, 1904, F. D. Monckton, clerk.

65 United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a true copy of a stipulation as to return to writ of certiorari filed in the above entitled case on January 25th, 1904, as the original thereof remains on file and of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Attest my hand and the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 28th day of January, A. D., 1904.

F. D. MONCKTON, *Clerk.*

66 United States Circuit Court of Appeals for the Ninth Circuit.

H. HACKFELD & COMPANY, LIMITED, Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error. } No. 940.

Return to Writ of Certiorari.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, in obedience to the foregoing writ of certiorari issued out of the Supreme Court of the United States and addressed to the honorable judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the cause wherein H. Hackfeld & Company, Limited, is plaintiff in error, and The United States of America is defendant in error, do hereby attach to the said writ a certified copy of a stipulation entered into between the attorneys of record for the several parties in said cause on the 18th day of January, A. D., 1904, the original of which stipulation has been heretofore filed in this court, and do make the same due return to said writ.

Seal United States Circuit Court of Appeals, Ninth Circuit.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States circuit court of appeals for the ninth circuit at San Francisco, California, this 28th day of January, A. D., 1904.

F. D. MONCKTON, *Clerk.*

67 [Endorsed:] File No. 19,178. Supreme Court U. S. October term, 1904. Term No. 164 H. Hackfeld & Co. petitioners *vs.* The United States. Writ of certiorari and return. Filed Feb'y 16", 1904.